

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Structure and Practices of the Video Relay)	CG Docket No. 10-51
Service Program)	
)	

**COMMENTS OF PAH! VRS AND INTERPRETEL LLC REGARDING FEDERAL
COMMUNICATIONS COMMISSION 47 CFR PART 64, CG DOCKET 10-51,
PROPOSED RULE, PUBLISHED IN THE FEDERAL REGISTER, 75 FR 51735 AUGUST
23, 2010**

Dated: September 7, 2010

By PAH! VRS and Interpretel LLC :

**Regarding Federal Communications Commission 47 CFR Part 64, CG Docket 10-51,
Proposed Rule, published in the Federal Register, 75 FR 51735 August 23, 2010**

The Companies would like to commend the Commission on progressing towards establishing concise and straightforward guidelines for the regulation of VRS industry. Thorough consideration on the part of the Commission of the industry's and community's responses to the NPRM issued this past June and the NOI issued this past August is evident in the proposed rules suggested at this time.

The Companies support the proposed rule requiring VRS providers' call centers to be located within the United States. The Companies note, however that there may be unique situations that would render the use of a call center outside of the United States preferable, without running contrary to the Commission's intent with regard to this rule, and would suggest that the Commission allow providers to petition on a case by case basis for permission to operate call centers outside the united states. Any such petition should demonstrate the necessity of such a call center, why a U.S. call center could not meet the provider's needs and how the non-U.S. call center would still meet the requirements of the Mandatory Minimum Standards and all other applicable Commission rules. This would leave the door open for call centers located outside the United States when such a call center meets both the Commission's requirements and a VRS operators needs, yet put a significant responsibility upon such a provider to justify the need for any such center.

There are a number of issues that arise from the proposal regarding the treatment of work-at-home CAs. First, different parts of the proposal appear contradictory; specifically, it is unclear how Section 2 and Section 19 function together. Section 2 states that "*The Commission recognizes that some VRS CAs work from home, and that there are benefits that come with the flexibility of these arrangements. This practice, however, raises concerns about whether the confidentiality of calls can be guaranteed and whether VRS CAs working from home can meet other mandatory minimum standards applicable to the provision of relay, such as the ability to*

handle emergency calls in accordance with the Commission's rules. The Commission seeks comment on how it can balance the goals of allowing CAs the convenience and flexibility that comes with working from home with the need to ensure the confidentiality of calls and that the Commission's mandatory minimum standards are met. The Commission also seeks comment on whether, if CAs may work from home, providers should be required to treat the homes of CAs who work from home as "call centers" for purposes of TRS administration." Later in the proposal, Section 19 states that *"In the 2010 VRS Reform NPRM, the Commission reaches tentative conclusions on a range of issues affecting the provision of VRS and ways to detect and prevent fraud and misuse in the VRS program. Specifically, the Commission tentatively concludes that: ... VRS CAs must work in a centralized call center where other personnel are present, including other CAs and supervisors."* These two sections of the proposed rules appear contradictory, and as such the Commission's intent is not clear. Additionally, there appear to be no proposed changes to the Mandatory Minimum Standards that reflect alterations to those rules regarding CAs working from home. The Companies take this to mean that the FCC is still reviewing comments on this topic in preparation for a subsequent ruling.

The Companies respectfully disagree with the proposed rule stating that *"VRS CAs must work in a centralized call center where other personnel are present, including other CAs and supervisors"* and the rationale behind it. The Companies believe that CAs working from home can do so in a manner that is completely professional and that meets all the mandatory minimum standards. As the result of a complete, practical and theoretical analysis of interpreters working from home, undertaken by the Companies, the following was concluded. Supervision of CAs can be done just as effectively remotely as in a centralized location and CAs can be highly effective working from home so long as proper protocols and procedures are established and adhered to. At-home CAs must agree to certain conditions that beyond those generally applied to call center interpreters. For example, such CAs must agree to have their home call center inspected and reviewed by a designated company agent at any time they are working, without advance notice. Furthermore, such interpreters must meet strict infrastructure standards at all times that include a locked room with no outsiders or visitors admitted or present while interpreting is taking place, must have a UPS power supply in use at all times, must perform in front of a company designated back drop and have a small erasable white board only for writing information necessary to convey information between the parties. A paramount consideration in the work at home model is the ability for complete and unannounced electronic monitoring of the video and audio of a call by designated managers. Conditions such as these allow a company to not only monitor an interpreter's call in a manner the effectiveness of which is at least equivalent to that of a supervisor in a call center. Such supervision is in fact generally more effective than that which takes place in a centralized call center, as a CA being monitored does not know at what point they are being monitored, as there is no supervisor physically looking over their shoulder. The potential for monitoring at any time is more effective an incentive than intermittent monitoring in person. Further, conversational confidentiality is at maximum with remote CAs, as there are no other parties in adjacent cubicles or otherwise nearby with the potential to overhear the spoken component of an interpreting session.

Furthermore, if the Commission were to prohibit at-home interpreters, a number of VRS providers would suffer irreparable harm to the detriment of their consumers. Several companies' business models rely upon the use of at-home CAs, and as such this rule would be at best destabilizing to those providers and the industry as a whole. Furthermore, such a measure would be anti-competitive in that the barriers of entry into the industry would continue to be unattainably high for many providers, as the costs associated with establishing call centers such as those called for in this proposed rule for all CAs are high, and may in the case of new

providers be prohibitively so. As a result of both of these factors, competition and innovation would likely suffer to the detriment of VRS users.

In addition, there are several other very desirable effects that result from the employment of at-home interpreters. The ability to immediately add interpreters when demands increase means that meeting load requirements is accomplished much more quickly and efficiently than when interpreters are required to physically commute to a call center to meet unexpected surges in demand. Furthermore, when CAs are allowed to work remotely, companies can hire the “best” interpreters regardless of their physical location, and this results in a highly “Green” workforce as the environmental impact of commuting is eliminated. It is the Companies’ conclusion that when at home interpreters are employed in the manner set forth above, the result is a workforce and quality and integrity of service that is at minimum on par with that provided by call center based interpreters, and that is in most cases superior.

The Companies are pleased to see that the Commission has laid out a reasonable plan for any potential suspension of any payments to providers. By affording providers due process, addressing procedures for the suspension or withholding of payments to providers in circumstances where the Fund Administrator reasonably believes that the minutes may not be legitimate or otherwise were not submitted in compliance with the TRS rules, while at the same time placing the burden on the provider to show that the minutes in question are compensable and were handled in accordance with the TRS rules, the Commission is taking steps towards providing much needed clarity in the reimbursement process.

At the moment, the Commission’s plan does not appear to be codified in the proposed changes to the MMS. The Companies believe it should be. The Companies further note that in setting forth a procedure for the withholding of minutes, it is important that it also be required that the Fund Administrator supply all supporting evidence as to why it reasonably believes the minutes may not be legitimate or otherwise were not submitted in compliance with the TRS rules.

The Companies further believe it is crucial to implement clear timelines with regard to any suspension of payments. As such, the Companies propose that a 14-day period for provider responses and a 14-day period for subsequent adjudication would create certainty and ensure timely action by both parties. In the event that the Fund administrator upholds the suspension or withholding following the application of proper procedure and due process, providers should have the right to appeal decisions to the Commission, consistent with current practice accorded for federal universal service fund matters.

The Companies are extremely concerned with the proposed rule stating that “*VRS calls that originate or terminate overseas shall not be compensable from the Fund.*” It is the Companies’ belief that the rule as drafted does not support the Commission’s intent and that the word “or” should be replaced with ‘and.’ As drafted, the rule does not seem to be consistent with any concept of functional equivalency. Providers today do review all calls to ensure that one leg of the call originates within the United States. While the Companies are well aware that there has been fraud associated with such calls, the answer avoiding such fraud in the future lies in setting forth clear rules and regulations with regard to which types of calls that are fraudulent and not in restricting otherwise permissible calls with an international component for those Americans who legitimately have the right to functional equivalency. Such a change is not currently addressed in the proposed changes within the MMS.

The Companies seek clarity with regard to how the Commission has addressed “idle” time in calls where the video caller is using a privacy screen. The Companies understand the

Commission's intent in addressing this issue is to decrease the incidence of fraudulent "run" calls. The current language put forth by the Commission states that after two minutes "CAs *may* disconnect the call." The use of the word "may" as opposed to, for example, "must" or "will" leaves the application of this rule open to interpretation, and as such has the potential to create ambiguity and inconsistency in its application across providers. The Companies would suggest adding a requirement that after 5 minutes, a CA *must* disconnect a call. Such a requirement would create consistency as to what consumers and providers should expect and the rules they must abide by. Any clear policy that would address the issue of fraudulent "run" calls and make it more difficult for individuals to defraud the TRS fund would certainly be welcome by all legitimate providers, the Commission, and consumers alike. Absent further guidance from the Commission, providers are forced to rely upon their own best judgment with regard to what constitutes legitimate idle time.

The Companies fully support the Commission's proposal of "*a rule specifically barring compensation for remote training calls initiated or promoted by or on behalf of a provider [that] would serve as an additional deterrent against fraud and misuse of the Fund.*" We would suggest consistency between this proposed rule and how it is set forth in the MMS. The wording in the MMS appears vague and is able to be construed to be broader than intended.

The Companies are in full support requiring the use of automated systems to capture call detail reports and with the items required to be submitted in the call detail records.

The Companies are in full support of requiring the submission of quarterly reports of call center information and the requirement to amend any quarterly report within 30 days of opening, closing or change of ownership or management of a call center.

The Companies are in full support of requiring senior management officials to provide various certifications as to the validity of their minutes.

The Companies are in full support of implementing whistleblower protections for their employees and believe that implementing whistleblower regulations throughout the industry, with mandatory training regarding such regulations for all employees, will go a significant ways towards identifying and reducing fraudulent activities within the industry. Information regarding whistleblower regulations should also be made a central part of Commission and industry outreach efforts.

The Companies are in full support of retaining call detail records for 5 years with the clear understanding that rules that are enacted cannot be applied retroactively. It needs to be clear that the records for any time period must be examined with respect to the rules that were in place at that time.

The Companies have significant concerns regarding the proposed rule stating that "*The administrator shall not compensate for minutes resulting from an Internet-based TRS call unless the entity seeking compensation from the Fund for such minutes clearly identified itself to the calling parties at the beginning of the call as the TRS provider for the call.*" The Companies respectfully believe this rule is vague and cannot be implemented without clarification and guidance from the FCC as to the intent of the rule and how it should be put into practice. Specifically, it is not clear what identification would be required by non-certified VRS providers. Must a non-certified VRS provider only identify itself by the name of the underlying certified entity? Clearly, if the only identification allowed is that of the TRS provider submitting minutes for reimbursement, new companies, branded-affiliates or subcontractors, as well as companies

whose certification is pending would be put at a distinct competitive disadvantage as compared to certified providers. In fact, such a requirement would significantly harm all non-certified and certification-pending providers and make it virtually impossible for a non-certified provider to grow to where it could eventually be granted certification.

An alternative interpretation of the rule would be that a non-certified VRS provider would provide identification to callers as “their company” using the services of “underlying certified provider.” This interpretation would be less harmful than the previous interpretation; nevertheless, it would still put non-certified or pending-certification providers at a strong disadvantage as compared to certified providers.

The Companies recognize that this proposed rule is part of the Commission’s overall desire to increase oversight of, and stem potential abuses by, non-certified providers. The Companies are in full agreement with this effort. The Companies believe, however, that rather than penalizing non-certified entities by limiting their branding, the FCC should simply increase its oversight of non-certified providers. As the Companies noted in their response¹ to the NPRM issued by the Commission earlier this year, oversight could be increased by requiring a formal relationship, designated an “operational affiliation” between certified and non-certified entities. The Companies believe that entities operating under the auspice of an “operational affiliate” whether they provide services as an entity: 1) whose applications for Fund eligibility are pending; or 2) that are providing services for the eligible provider as a subcontractor; or 3) that are engaged by eligible providers as branded affiliates; or 4) provide services under a separate brand, are ultimately the responsibility of the eligible provider. From an operational perspective, these entities would be required to meet all Mandatory Minimum Standards, operate under all operational guidelines, and in every manner provide service as if it had already been granted eligibility by the Commission. This ensures that a single entity remains directly responsible to the Commission, who maintains legal authority over the eligible provider’s regulated operations, and subject to Commission enforcement action. The Commission could very clearly identify all such relationships on its “Relay Service Providers” web page and by doing so allow consumers to have a clear understanding of any “operational affiliations” that may exist in the market place.

Ultimately, to avoid branding ambiguity, there should be a means for a VRS provider to achieve certification in a timely manner. A solution could take a number of forms: First, the FCC should take action within a few months on certification applications for VRS providers. Second, a new ‘provisional certification’ designation, as proposed by a number of groups in response to the NOI in August 2010², would provide a path for providers who desire to move beyond operational affiliation. The FCC would be able to monitor a provisionally certified provider to ensure full compliance while the full certification is pending. At the same time, a new or growing VRS provider would have the means to brand and identify itself to callers without any ambiguity, providing a stepping-stone to grow and achieve full certification. Of course, such a provisional certification would also need to be granted in a timely manner in order for it to be of any benefit.

In promulgating the rules proposed in the Federal Register on the 23rd of August, 2010, the Commission has continued to show its dedication to the continued refinement of a clear and

¹ Proceeding 10-51, Comments of PAH! VRS and Interpretel, LLC 6/23/2010

² NOI Reply Comments of Convo Communications, LLC 09/02/2010; NOI Reply Comments of Say-Hey, Inc. 09/02/2010; NOI Comments of Sky VRS, 08/24/2010; NOI Comments of Telecommunications for the Deaf and Hard of Hearing, Inc. et al., 8/18/2010; NOI Comments of PAH! VRS and Interpretel, LLC 8/18/2010; NOI Comments of Convo Communications, LLC 8/16/2010

concise regulatory structure for the VRS industry. The Companies commend such efforts, and remain confident that through continued interaction between the Commission, members of the VRS industry, and VRS consumers, rules and regulations are sure to be established that not only deter fraud and abuse of the TRS fund, but that also meet the goal of allowing VRS industry members to provide this vital service in an environment that promotes healthy competition between providers, while at the same time promoting efficiency, quality of service and innovation for the benefit of both the TRS fund and for VRS consumers as well.

Respectfully submitted this 7th day of September, 2010,

PAH! VRS, INC.

By:

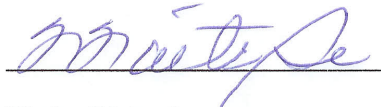


Brian J. Collins
Chief Executive Officer
5915 South Emerson Ave. Suite 100
Indianapolis, IN 46237
Telephone: (800) 665-4724

-and-

Interpretel, LLC

By:



Wesley Waite, Sr.
President and Chief Executive Officer
8920 Fair Oaks Parkway
Fair Oaks Ranch, TX 78015
Telephone: (210) 698-0500